

## Communication from Public

**Name:** Alfred Fraijo

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**Council File No:** 21-0777

**Comments for Public Posting:** Dear Mr. Bencomo, Attached please find a letter addressed to the Planning and Land Use Management Committee regarding Agenda Item No. 8 (CF 21-0777) for consideration at its upcoming meeting on Tuesday, November 2, 2021. Thank you

November 1, 2021

File Number: 66CS-292260

**Via LACouncilComment.com**

Planning and Land Use Management Committee  
City of Los Angeles  
200 N. Spring Street  
Los Angeles, CA 90012

Re: CF-21-0777 (PLUM Agenda Item No. 8)

Dear Chairman Harris-Dawson and Honorable Councilmembers:

Our firm represents 9712 Oak Pass Road, LLC (the "Applicant") in connection with The Retreat at Benedict Canyon (the "Project") in the City of Los Angeles (the "City"), Case Nos. CPC-2018-1506-GPA-VZC-SP-SPP-SPR, VTT-74908, ENV-2018-1509-EIR. As you know, on October 18, 2021, I transmitted a letter on behalf of the Applicant to the Planning and Land Use Management ("PLUM") Committee urging your honors to deny the motion introduced by Councilmember Paul Koretz on July 1, 2021 (the "Motion"). As set forth therein, the Motion is illegal and the City Council does not have the authority under the Municipal Code, Charter or otherwise to rescind the GPA application once initiated by the Director. In other words, the Motion cannot legally stand as currently proposed and thus, Chairman Harris-Dawson should not allow the Motion to be heard by the committee.

The purpose of this letter is to reiterate that Councilmember Paul Koretz's bias and animus towards the Project as previously described in my October 18 letter, disqualifies him from any further consideration of the Project. He has a conflict of interest that requires his recusal. Meaning, should the Motion proceed to full Council consideration, Councilmember Koretz shall recuse himself, as well as, if the Project should come before the Council for legislative action, Councilmember Koretz shall recuse himself.

The plain language of the Motion makes clear Councilmember Koretz's preconceived bias against the Project. Councilmember Koretz has clearly taken a position against the Project as detailed in the text of the Motion. The Motion makes various claims that are wholly unsubstantiated by substantial evidence and are premature given the absence of any recommendations from the Planning Commission, Planning staff, or Mayor. Additionally, the Motion makes conclusory statements about the environmental effect of the Project regarding noise, transportation, and biological resources without reading a single page of the extensive Draft Environmental Impact Report currently being drafted and reviewed by the City. "[T]he project's hillside location, size, height, operations, and other significant features will not be compatible with and will adversely affect or further degrade adjacent properties, the surrounding neighborhood, and public health, welfare, and safety." (Motion p. 2).

The Motion raises serious conflict of interest issues that impede Councilmember Koretz's ability to balance the facts and merits of the Project as a neutral and impartial decisionmaker once it is considered by Council. Councilmember Koretz must recuse himself from consideration of the

Project. "To promote government decisions that are fair and accountable, City officials must avoid participating in actions that affect or appear to affect their private interests, both financial and non-financial." (Ethics Commission, City Officials Handbook 2021, p. 12). Among the justifications for a conflict of interest is the City's appearance standard that states that "it is 'not in the public interest' for you to act on a matter if you do not believe that you could act impartially or if the public might reasonably reach that conclusion. This can be true even when your interest in the matter is not financial. The City Attorney may decide, pursuant to City Charter Section 222, that the public interest prevents you from acting even when you would not be disqualified by state conflict of interest laws." (*Id.* at 13). In this case, the Motion, its bald assertions, and Councilmember Koretz's attempt to circumvent the mandatory procedures of the Charter and LAMC demonstrate that he could not act impartially on the Project. His mind has clearly been made up even before he has reviewed the DEIR and considered City Planning, City Planning Commission, and Mayor recommendations.

In addition, the recent decision in *Petrovich v. City of Sacramento*, 48 Cal. App. 5th 963 (2020) governs here. In *Petrovich*, the court held that an applicant for a gas station conditional use permit did not receive a fair hearing by the Sacramento City Council because there were concrete facts showing that a councilmember was biased, and he did not recuse himself from the hearing on the permit. Specifically, while the councilmember's membership in the neighborhood group that opposed the gas station and his statement that "a gas station does not fit in the development as originally proposed" were insufficient to prove bias, his counting of votes prior to the hearing revealed a "prehearing commitment to achieving th[e] outcome" of a rejection of the permit (*Id.* at 974–76). Furthermore, the councilmember's preparation of "talking points" that were essentially "a presentation against the gas station" had "[t]he only conceivable purpose [of] assist[ing] advocacy in opposition to the gas station" (*Id.* at 975). The fact that the "talking points" were emailed to the mayor and appeared in the letters to other councilmembers from one of the lead opponents of the gas station were additionally concrete enough to establish that the councilman was biased.

Here, the City Council would act in both an adjudicatory and legislative capacity for the Project because the Vesting Tentative Tract Map and CEQA would be appealable to the City Council, while the GPA and Specific Plan recommendations would be acted on by the City Council. That is, the City Council would sit in a role similar to a judge and "judging applications for land use permits is one of those times." (*Woody's Group, Inc. v. City of Newport Beach*, 233 Cal. App. 4th 1012, 1021 (2015)). Based on the concrete facts, Councilmember Koretz is not a neutral and unbiased decisionmaker because of the affirmative steps and behind-the-scenes advocacy he has participated in to oppose the Project. The councilmember has been advocating against the Project since November 2018, even during the NOP comment period as noted in the councilmember's NOP opposition letter dated November 25, 2020. In fact, on October 30, 2018, the board members of Save Our Canyon ("SOC") (the leading Project opponent) awarded Councilmember Koretz a green baton inscribed "From Save Our Canyon to Paul Koretz, Champion of the Mountains 2018" to "hail L.A. City Councilman Paul Koretz (5th District) for deciding early in the process that he will not support the [P]roject as proposed." The meeting "was a victory dance for Koretz" and a significant SOC fundraiser as "the pitch for donations was substantial." SOC President Mark Levin "asked the packed house to contribute at least \$1,000 per family." Upon accepting the award, the councilmember said that, "in his entire political career,

'I don't think I've ever gotten support for opposing a project . . . I am truly honored.'" (Beverly Hills Courier, "Funds To Fight Benedict Canyon Hotel Focus Of Meeting To Thank L.A. City Councilman Paul Koretz", pp. 8, 17, <https://issuu.com/bhcourier/docs/bhc110218/18?ff>).

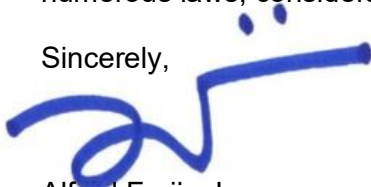
Yet, the Project is not at a point where the City Council is being asked to weigh in on the merits. In fact, Councilmember Koretz has repeatedly made a public value judgement about the environmental impacts of the Project without having received any of the environmental analysis CEQA requires to make an informed determination by the lead agency. His actions are, in fact, impairing this impartial analysis from taking place and further hindering the Applicant's ability to study the alternatives that are mandated by the GPA initiation. For example, Councilmember Koretz engaged at least in the following improper activities:

- Held substantive ex parte communications with Project opposition relevant to the merits of an adjudicatory proceeding on multiple occasions.
- Corresponded with other members of the City Council to obtain support for the Motion, including Councilmember Bob Blumenfield who seconded the Motion.

While affirmative actions to assist opponents of a project are likely sufficient to prove actual bias, the standard is not so strict. Instead, "there must not be an *unacceptable probability of actual bias* on the part of the municipal decision maker." (*Woody's Group, Inc. v. City of Newport Beach*, 233 Cal. App. 4th 1012, 1022 (2015) (internal quotations omitted) (emphasis added)). Taking a position against a project and then proposing an action that overturns an earlier land use decision related to the project is sufficient to establish an unacceptable probability of actual bias. (*Id.* at 1023). For example, in *Woody's Group*, a councilmember made an official request to the city clerk to appeal the planning commission's decision to grant a conditional use permit to a restaurant because he believed the permitted activities were "inconsistent with the existing and expected residential character of the area and the relevant policies of the . . . General Plan." (*Id.* at 1017). This request, in tandem with the councilmember's ultimate introduction of and vote on the appeal, sufficed to prove an unacceptable probability of actual bias. Here, Councilmember Koretz has clearly taken a position against the Project as detailed in the text of the Motion. The Motion is like the appeal in *Woody's Group*: it is Councilmember Koretz's action to overturn the earlier decision by the Director to initiate the GPA for the Project. As such, Councilmember Koretz has an unacceptable probability of actual bias and must recuse himself from consideration of the Motion and the Project.

The same set of rules would mandate that Councilmember Koretz recuse himself from considering the Motion and the Project at Council. Because the Motion on its face violates numerous laws, consideration by Council should not come to pass.

Sincerely,



Alfred Fraijo Jr.  
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:4870-8909-6960.2

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